



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

**JOHN M. JOHNSON
KAYE SCHOLER LLP
425 PARK AVENUE
NEW YORK, NY 10022**

COPY MAILED

JUL 15 2004

OFFICE OF PETITIONS

In re Application of :
Gary Dommer et al : DECISION ON PETITION
Application No. 10/085,489 : UNDER 37 CFR 1.55(c)
Filed: February 26, 2002 :
Attorney Docket No. 46522-1101 :
:

This is a decision on the petition, filed May 2, 2003,¹ which is being treated as a petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority under 35 U.S.C. § 119(a)-(d) for the benefit of a prior-filed foreign application; namely Great Britain Application No. 0104781.9, filed February 27, 2001.²

The petition is **DISMISSED**.

A petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority requires:

- (1) The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;
- (2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date in either an oath or declaration or in an Application Data Sheet (see 37 CFR 1.63(c)(2) and 37 CFR 1.76(b)(6))

¹ The Office sincerely apologizes for the delay in replying to the instant petition and any inconvenience caused petitioner by this delay.

² Receipt is acknowledged of the certified copy of this application.

- (3) the surcharge as set forth in 37 CFR 1.17(t);
 - (4) a statement that the entire delay between the date the claim was due under 37 CFR 1.55(a)(1) and the date the claim was filed was unintentional. (The Commissioner may require additional information where there is a question whether the delay was unintentional.); and
 - (5) the above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.

The instant petition fails to comply with items (2) and (4). In this regard, the claim for foreign priority must be either set forth in an oath or declaration in accordance with 37 CFR 1.63(c)(2) or in an application data sheet in accordance with 37 CFR 1.76(b)(6). Additionally, the statement of unintentional delay should state: "The entire delay between the date the claim under 37 CFR 1.55(a)(1) was due and the date the claim was filed was unintentional."

Accordingly, before the petition can be granted, compliance with items (2) and (4) above must be satisfied. The above items should be submitted under a cover letter entitled "Renewed Petition under 37 CFR 1.55(c) to Accept a Late Claim for Foreign Priority," and addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Window located at:

U.S. Patent and Trademark Office
220 20th Street S
Customer Window, Mail Stop Petitions
Crystal Plaza Two Lobby, Room 1B03
Arlington, VA 22202

By fax: (703) 872-9306
ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (703) 305-8680.

As authorized, the \$1,300 fee due for the instant petition will be charged to Deposit Account No. 50-0988 as authorized.

This application is being forwarded to Technology Center AU 2173 for examination in due course.

Frances Hicks
Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy